

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

INTERNATIONAL ASSOCIATION OF )  
SHEET METAL WORKERS LOCAL 16; )  
TRUSTEES OF THE OREGON SHEET )  
METAL WORKERS MASTER )  
RETIREMENT TRUST; THE SHEET )  
METAL WORKERS #16 HEALTH )  
TRUST; THE DIRECTORS OF THE )  
COLUMBIA CHAPTER OF THE SMACNA )  
INDUSTRY FUND, )

Plaintiffs, )

v. )

COQUILLE SHEET METAL, INC., )

Defendant. )

No. CV-10-1429-HU

FINDINGS & RECOMMENDATION

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Attorneys for Plaintiff

1 HUBEL, Magistrate Judge:

2 Plaintiffs brought this action against defendant Coquille  
3 Sheet Metal, Inc. for breach of a collective bargaining agreement  
4 and violation of the Employee Retirement Income Security Act  
5 ("ERISA"), 29 U.S.C. § 1132(g)(2). An Order of Default [doc. #8]  
6 was entered on January 26, 2011. Before the court is plaintiff's  
7 motion for default judgment [doc. #9]. For the reasons set forth  
8 below, I recommend denying the motion.

9 **FACTS**

10 Plaintiffs are authorized under a Collective Bargaining  
11 Agreement ("CBA") and Trust Agreements to collect fringe benefit  
12 contributions, governed by ERISA, from signatory employers.  
13 Defendant Coquille Sheet Metal, Inc. is an Oregon corporation and  
14 a signatory employer. Plaintiffs brought the instant ERISA action  
15 on November 19, 2010, to collect outstanding trust fund  
16 contributions, liquidated damages in the amount of 20% of the  
17 delinquent contributions, interest at 18%, reasonable attorney fees  
18 and costs. Compl. ¶ 16.

19 According to plaintiffs, defendant failed to make the  
20 contributions due for August and September 2010, which total  
21 \$4,181.80. Compl. ¶¶ 17, 18. Interest totals \$52.18. Compl. ¶  
22 20. Attorneys fees total \$1500. Affidavit Heidi Brown ¶ 8 Ex. 5.  
23 Costs total \$410.90. Id. According to the body of the Complaint,  
24 the liquidated damages allegedly total \$972.58. Compl. ¶ 19. In  
25 the prayer for relief, however, and in the Affidavit of Heidi  
26 Brown, plaintiffs allege that liquidated damages total \$3,275.86.  
27 See Compl. ¶ 23; Affidavit Heidi Brown ¶ 6.

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2 - FINDINGS AND RECOMMENDATION

1 The Union Agreement's Addendum VI, The Supplementary Agreement  
2 on Fringe Benefits provides:

3 In the event an Employer fails to make any of the  
4 contributions or payments as required, such Employer  
shall become liable for and be required to pay:

5 (a) The unpaid contributions; and

6 (b) Liquidated damages (to compensate for related  
7 administrative and collection efforts which may be  
8 difficult to assess and to conform to ERISA 502(q)(2)),  
which shall be the largest of the following:

9 1. A maximum of 20% of the unpaid contributions  
per fund, but no more than \$750.00 for local  
10 funds.

11 2. \$25.00 per fund

12 (c) Liquidated damages to compensate the Trust for loss  
13 of investment of the unpaid contributions, which  
14 shall be computed as interest on the unpaid  
contributions from the delinquency date (currently  
the 20th of the payment due month) to date of  
payment, at eighteen percent (18%) per annum.

15 Brown Aff. Ex. 1, at 15. The Trust Amendment 2002-1 to Trust  
16 Agreement for Oregon Sheet Metal Workers Master Retirement Trust,  
17 however, contains a different liquidated damages clause:

18 In the event of delinquency as to any contribution or  
19 report or both, the Employer shall be liable for:

20 . . . .

21 (b) liquidated damages to compensate the Trust for loss  
22 of investment of the unpaid contributions, which  
23 shall be computed as interest on the unpaid  
contributions from the delinquency date (currently  
the twentieth of the payment due month) to date of  
24 payment, at the following rate per annum; eighteen  
percent (18%) on and after August 1, 1991; and

25 (c) liquidated damages to compensate for related  
26 administrative and collection effort which may be  
difficult to conform to ERISA § 502(g)(2), which on  
and after January 1, 2002 for this Trust shall be:

27 (1) A minimum of \$50 per delinquency per fund; or

28 (2) Twenty percent (20%) of the unpaid

1                   contributions if greater than (1) and less  
2                   than (3); or

3                   (3) A maximum of \$1,500 per delinquency (per fund)  
4 Brown Aff. Ex. 2, at 3. Similar clauses to the second quote appear  
5 elsewhere in the Affidavit's exhibits. See Brown Aff. Ex. 2, at 8;  
6 Ex. 3, at 1; Ex. 3, at 6, Ex. 4, at 1; Ex. 4, at 6.

### 7                   **DISCUSSION**

8                   Due process requires plaintiffs seeking default judgements to  
9 make out a prima facie case showing entitlement to judgment.  
10 TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir.  
11 1987). Federal Rule of Civil Procedure 55 provides that a clerk  
12 may enter a default judgment "[i]f the plaintiff's claim is for a  
13 sum certain or a sum that can be made certain by computation."  
14 Fed. R. Civ. P. 55(b)(1). In order for a court to enter a default  
15 judgment, it needs to conduct an accounting, determine the amount  
16 of damages, and establish the truth of any allegation by evidence.  
17 See Fed. R. Civ. P. 55(b)(2)(A)-(C). This court has previously  
18 held that in trust fund contribution cases, in order to be entitled  
19 to a default judgment plaintiffs must include a breakdown of the  
20 calculations in a format for easy review of the principal amount  
21 owed, the date it was paid, the interest for that month, and the  
22 liquidated damages for that month. Tr. of the Plumbers and  
23 Pipefitters Nat. Pension Fund v. Scott Co. of Cal., No. CV-03-1099-  
24 HU, 2003 WL 24015255, at \*3 (D. Or., Oct. 10, 2003).

25                   In cases where trusts seek unpaid dues from signatory  
26 employers, the prima facie case begins with the submission of the  
27 master agreements that show the trusts are entitled to collect  
28 contributions each month. Submission of the master agreements,

1 however, is only one component of making a prima facie case.  
2 Documentation showing the computations is also required.

3 Typically in the instant type of case the trusts will perform  
4 an audit of the non-paying signatory employer's financial records  
5 for the months in question. The audit records will be reviewed by  
6 an accountant or similarly qualified professional to determine the  
7 proper amount of unpaid contributions. When moving for a default  
8 judgment, the moving plaintiff will submit a declaration from the  
9 accountant stating that he or she reviewed the audit records, that  
10 certain employees worked for a certain number of hours at a certain  
11 rate, and then calculate the contributions due under the  
12 agreements. Typically the accountant will include a spreadsheet  
13 showing his or her calculations showing how the unpaid dues were  
14 calculated for the months in question.

15 Although the above procedure is not mandatory, it ensures that  
16 the court has the proper record from which to "make the sum certain  
17 by computation" to support a default judgment.

18 After reviewing the submitted materials, I cannot recommend  
19 granting a default judgment at this juncture. Although the  
20 agreements submitted demonstrate the plaintiffs' contractual right  
21 to receive payments from the defendant, plaintiffs failed to submit  
22 any documentation beyond their bare conclusions supporting the  
23 amounts due for the August and September 2010 contributions.  
24 Moreover, the record does not contain any documentation showing  
25 which formulation for the liquidated damages was used or how they  
26 were calculated. The absence of documentation, together with the  
27 discrepancy in the Complaint about whether liquidated damages total  
28 \$972.58, \$3,275.86, or some other amount, dictates that a default

1 judgment should not be entered on the record as it exists now.

2 **CONCLUSION**

3 Defendant's motion for default judgment [doc. #9] should be  
4 denied with leave to reapply on a proper record.

5 **SCHEDULING ORDER**

6 The Findings and Recommendation will be referred to a district  
7 judge. Objections, if any, are due April 26, 2011. If no  
8 objections are filed, then the Findings and Recommendation will go  
9 under advisement on that date.

10 If objections are filed, then a response is due May 13, 2011.  
11 When the response is due or filed, whichever date is earlier, the  
12 Findings and Recommendation will go under advisement.

13  
14 IT IS SO ORDERED.

15 Dated this 8th day of April, 2011.

16 /s/ Dennis J. Hubel

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18 Dennis James Hubel  
19 United States Magistrate Judge  
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